IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 983 OF 2005

1)Sita Tayala Tamang & Anr. ... Petitioners

V/s

State of Maharashtra ... Respondent

Mr.Shir Motariya advocate for petitioners

Mr. D.P. Adsule, APP for the State.

Coram : V.M. Kanade, J.

Dated : 06/04/2005

P.C. :-

1 I have heard learned counsel for the petitioners and APP for the State.

2 The petitioners have challenged the order passed by the J.M.F.C. Pune granting the police custody of the accused to investigate into the matter for a period of 7 days. It is alleged that the order directing the grant of police custody is not necessary as the petitioners are women. It is submitted on behalf of the petitioners that the order was passed by the Magistrate without application of mind.The learned counsel has taken me to the FIR, remand report which was filed by the prosecution and order of the Magistrate. I am unable to accept the submission of the learned counsel appearing for the petitioners. I have

perused the order passed by the Magistrate. The Magistrate has after perusing the record of the case and after ascertaining that there was no complaint of ill-treatment to the accused accepted the remand report filed by the officer of the prosecution and has observed that ground for the police custody was made out by the prosecution. It is submission of the learned counsel appearing on behalf of the petitioners that the investigation was not carried out by the special officer as required by the Act. He relies upon the judgment reported in 2003 CRI L.J. 533. The ratio of the said decision is not applicable to the facts of the present case.

3 The Magistrate however is directed to consider t what steps have been taken by the prosecution during the last 7 days. Ordinarily, the police custody for 7 days ought not to have been granted by the Magistrate as the petitioners are women. Both the petitioners are of 40 years. If a fresh application for remand is made he may grant police custody for one or two days, if a case is made out by the prosecution for extension of remand. If an application is made for police remand, the Magistrate should take into consideration the principles which are to be considered while granting police custody.With these directions, application is rejected.

Parties to act on authenticated copy issued by the Registry.

(V.M. Kanade, J.)